

Editor's note: Reconsideration granted; Norman Heyano appeal dismissed by order dated Sept. 16, 1975 -- See 20 IBLA 332A below.

KATIE WASSILLIE ET AL.

IBLA 75-2, etc.

Decided June 6, 1975

Appeals from separate decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment applications listed in Appendix.

Vacated and Remanded.

1. Alaska Native Allotments -- Classification and Multiple Use Act of 1964

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification remains in effect.

APPEARANCES: Robert Bundy, Esq., James Grandjean, Esq., and Bruce C. Twomley, Esq., of Alaska Legal Services Corp.

OPINION BY CHIEF ADMINISTRATIVE JUDGE FRISHBERG

In applying the guidelines promulgated by the Assistant Secretary, Land and Water Resources, on October 18, 1973, the Alaska State Office, Bureau of Land Management, determined that appellants, listed in the Appendix, failed to complete five years use and occupancy prior to a withdrawal of the land pursuant to a classification under the Classification and Multiple Use Act, 43 U.S.C. § 411 et seq. (1970).

The Secretary's guidelines of October 18, 1973, provided:

Use and Occupancy of Withdrawn or Reserved Lands

Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native Allotment Act. With respect to reserved or withdrawn

land, if a Native had completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted.

As examples of application of the above, note the following:

1. Where a Native has initiated and completed substantial use and occupancy of the land for five years prior to the withdrawal or reservation, the allotment may be granted, even though the land is still withdrawn at the time of application.
2. Where a Native has not completed the five-year period of statutory use and occupancy of lands prior to the effective date of a withdrawal or reservation of the lands, the allotment application should be rejected.

[1] On May 16, 1975, the Assistant Secretary supplemented paragraph 3 of page 3 of his guidelines of October 18, 1973, by adding the following:

When a Native has initiated use and occupancy of the land prior to the date of classification under the Act of September 19, 1974 (43 U.S.C. 1411-1418), such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification encompassing the land is still in effect.

It is proper that the applications from these appellants now be considered under the new guidelines.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 41., the decisions appealed from are vacated and the case records remanded for appropriate processing in accordance with the May 16, 1975, instruction.

Newton Frishberg
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

APPENDIX

IBLA 75-2 AA-6291 Katie Wassillie
75-62 AA-7576 Hienie W. Gene
75-66 AA-5705 Ray Eskilida
75-75 AA-5893 Sarah A. Pence
75-113 F-19030 Olive Cleveland
75-175 AA-5706 Albert Charley
75-285 AA-6056 Francine Gagnon
75-297 AA-7374 Raymond D. Craig
75-367 AA-5931 Mona Joy Michal
75-455 AA-8048 Margaret A. Clum
75-457 AA-6517 Edward Karshekoff
AA-6734 Norman Jacko
AA-6734 Norman Jacko
AA-6737 Elena Nickoli
AA-7349 Elaine V. Aaberg
75-465 AA-7844 Thomas A. Hedlund
AA-7163 Arlene Simon Wilson
AA-7332 William L. Dozette
AA-7454 Judy L. Jaworski
AA--7669 Norman J. Heyano
AA-8279 Ellamae A. Chaney
75-500 AA-7239 Patricia Hopson Paulsberg
75-562 AA-6714 Mary J. Sanford
75-115 F-16597 Ernest M. Chase

September 16, 1975

IBLA 75-465A :	AA 7669	
	:	
NORMAN J. HEYANO	:	Alaska Native allotment
	:	
	:	Petition for reconsideration
	:	granted
	:	
	:	Appeal dismissed

ORDER

Norman J. Heyano appealed from rejection of his application AA 7669 for an Alaska Native allotment, pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 through 270-3 (1970). The application was rejected by the Bureau of Land Management because the only use or occupancy claimed by Heyano was initiated in 1965, subsequent to the time the land had been selected by the State of Alaska pursuant to the Act of July 7, 1958, 72 Stat. 339.

Through inadvertence, the appeal of Heyano was joined with appeals of other Alaska Natives whose applications had been rejected because of conflicts with multiple use classifications issued pursuant to 43 U.S.C. § 1411 (1970), and was remanded to BLM for further consideration. Katie Wassillie et al., 20 IBLA 330 (June 6, 1975).

The Bureau of Land Management has petitioned for reconsideration of the remand of the Heyano case for the reason that its rejection was for a different cause from that discussed in the rationale for Wassillie. BLM is correct in its premise. We grant the petition and will reconsider the appeal of Heyano.

Review of the record in the Heyano file shows that counsel for appellant had filed a motion to dismiss the appeal with prejudice. We hereby grant that motion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the appeal of Norman J. Heyano is dismissed.

Newton Frishberg

Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge
Box 181

APPEARANCES: Henry W.Cavallera, Esq.
Alaska Legal Services Corp.

P.O.

Dillingham, Alaska 99576

Martin Ritvo
Administrative Judge

